

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

ERICA M. SMITH,

Plaintiff,

vs.

ANDREW M. SAUL, Commissioner of  
the Social Security Administration,

Defendant.

8:18-CV-240

MEMORANDUM AND ORDER

This matter is before the Court upon the plaintiff's Motion for Award of Attorney Fees Pursuant under the Equal Access to Justice Act, [28 U.S.C. § 2412\(d\)](#) ([filing 21](#)). The defendant has no objection to awarding of fees and expenses in the amount of \$4,176.02, which represents 19.7 hours of work at a rate of \$201.60 per hour and 1 hour of work at a rate of 204.50 per hour.<sup>1</sup> [Filing 21-2 at 1.](#)

The Court has determined that plaintiff was the prevailing party in this action, as the Commissioner's decision was reversed and the case was remanded to the Commissioner for further proceedings; that the application for fees was filed in a timely fashion;<sup>2</sup> and that the position of the

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<sup>1</sup> The maximum hourly fee of \$125 specified in [28 U.S.C. § 2412\(d\)\(1\)\(D\)\(2\)\(A\)](#) was adjusted to account for inflation. [See filing 21-1 at 2-3.](#)

<sup>2</sup> An Equal Access to Justice Act application based on a district court judgment remanding a case pursuant to sentence four of [42 U.S.C. § 405\(g\)](#) must be filed no later than 30 days after the sentence four judgment has been entered and the appeal period has run such that the judgment is no longer appealable. [See \*Pottsmith v. Barnhart\*, 306 F.3d 526, 527-28 \(8th Cir. 2002\); see also \*Shalala v. Schaefer\*, 509 U.S. 292, 302 \(1993\); \*Melkonyan v. Sullivan\*, 501 U.S. 89, 94-97 \(1991\).](#)

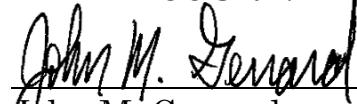
Commissioner was not substantially justified because the administrative law judge made findings that were not supported by substantial evidence. *See Koss v. Sullivan*, 982 F.2d 1226 (8th Cir. 1993). Therefore, the plaintiff is entitled to an award of attorney fees.

IT IS ORDERED:

1. The plaintiff's Motion for Award of Attorney Fees Pursuant under the Equal Access to Justice Act, 28 U.S.C. § 2412(d) (filing 21) is granted.
2. By separate document, the Court shall enter judgment for the plaintiff and against the defendant providing that the plaintiff is awarded attorney fees of \$4,176.02.

Dated this 23rd day of September, 2019.

BY THE COURT:



John M. Gerrard  
Chief United States District Judge